



[BILLING CODE: 6750-01S]

FEDERAL TRADE COMMISSION

[File No. 111 0101]

Renown Health; Analysis of Agreement Containing Consent Orders to Aid Public

Comment AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order -- embodied in the consent agreement -- that would settle these allegations.

DATES: Comments must be received on or before September 5, 2012.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "Renown Health, File No. 111 0101" on your comment, and file your comment online at <https://ftcpublishcommentworks.com/ftc/renownhealthconsent>, by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex D), 600 Pennsylvania Avenue, NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld, Erika Wodinsky (415-848-5100), FTC Western Region, San Francisco, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade

Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 6, 2012), on the World Wide Web, at <http://www.ftc.gov/os/actions.shtm>. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before September 5, 2012. Write "Renown Health, File No. 111 0101" on your comment. Your comment – including your name and your state – will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health

information. In addition, do not include any “[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,” as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).¹ Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/renownhealthconsent> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!/home>, you also may file a comment through that website.

If you file your comment on paper, write “Renown Health, File No. 111 0101” on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex D), 600 Pennsylvania Avenue, NW, Washington, DC 20580. If possible, submit your paper comment to the Commission by courier

¹ In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before September 5, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

Analysis of Agreement Containing Consent Order to Aid Public Comment

I. Overview

The Federal Trade Commission has accepted an agreement containing two consent orders with Renown Health. The agreement settles charges that Renown Health violated Section 7 of the Clayton Act, 15 U.S.C. § 18, by substantially lessening competition in the market for cardiology services in and around Reno, Nevada, through its acquisition of the two largest cardiology practices in the Reno area and its employment of the cardiologists whose practices it acquired.

The Decision and Order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed Decision and Order final. The Order to Suspend, which is final immediately, will remain in force either until the Decision and Order becomes final or the Commission decides not to issue an order.

The purpose of this analysis is to facilitate public comment on the proposed Consent

Orders. The analysis is not intended to constitute an official interpretation of the agreement and proposed Consent Orders or to modify their terms in any way. Further, the proposed Consent Orders have been entered into for settlement purposes only and do not constitute an admission by Renown Health that it violated the law or that the facts alleged in the Complaint (other than jurisdictional facts) are true.

II. Background and Structure of the Market

Renown Health is based in Reno, Nevada, and operates general acute care hospitals and commercial health plans which serve the Reno area. It is the largest provider of acute care hospital services in northern Nevada.

Prior to the transactions at issue, most of the cardiologists practicing in the Reno area were affiliated with two medical groups which did business under the names Sierra Nevada Cardiology Associates (“SNCA”) and Reno Heart Physicians (“RHP”). Cardiologists are generally internal medicine physicians who specialize in the practice of cardiology, including the provision of non-invasive services (general cardiology), invasive cardiology services (e.g., diagnostic cardiac catheterization), interventional cardiology services (e.g., catheterizations and the placement of stents), and electrophysiology services (e.g., services related to the diagnosis and treatment of heart rhythm conditions). The practices of the SNCA and RHP physicians did not generally include cardiac surgery or pediatric cardiology. Other than the physicians affiliated with SNCA and RHP, there are very few cardiologists practicing adult cardiology in the Reno, Nevada, area.

In late 2010, Renown Health reached agreements to acquire SNCA’s medical practice and to employ the 15 SNCA cardiologists who practiced in the Reno area. Prior to Renown

Health's acquisition of SNCA, it did not employ any cardiologists. With the employment of the SNCA cardiologists, Renown Health competed with RHP in the provision of cardiology services. In March 2011, Renown Health acquired RHP. As part of this acquisition, Renown Health employed the 16 RHP cardiologists who practiced in the Reno area.

Among other terms, the employment agreements between Renown Health and the cardiologists from both SNCA and RHP contain covenants that prohibit the cardiologists from entering into medical practice in competition with Renown Health ("non-compete provisions"). As a result of the acquisitions of the two medical groups (and the employment of the physicians affiliated with those groups), Renown Health now employs approximately 88% of the physicians providing cardiology services for adults in the Reno area.

III. The Complaint

The complaint alleges that Renown Health's acquisitions of the two cardiology practices created a highly concentrated market for the provision of cardiology services in the Reno area. According to the complaint, the consolidation of the two competing groups into a single group of cardiologists employed by Renown Health has eliminated competition based on price, quality, and other terms of competition. The consolidation of the two groups into one increased the bargaining power of Renown Health and may lead to higher prices. The complaint further alleges that entry into the market at a scale large enough to form a competitive alternative for health plans is unlikely to be timely or sufficient to deter the likely price increases.

IV. The Consent Orders

The goal of the Consent Orders in this matter is to restore competition for cardiology services in the Reno area as quickly as possible. The Commission believes that competition is

likely to be restored if Renown Health is required to release a certain number of its cardiologist employees from their employment contracts freeing them to practice either as employees of other health care entities or as part of independent medical groups in the Reno area. Renown Health has entered in an Agreement Containing Consent Orders, which includes the Order to Suspend Enforcement of Renown Non-Compete (“Order to Suspend”) and the Decision and Order.

A. Order to Suspend Enforcement of Renown Non-Compete

The Order to Suspend establishes a period of time during which the former SNCA and RHP cardiologists currently employed by Renown Health in Reno may explore other employment and professional opportunities in the Reno area confidentially, whether as an employee, a member of a medical group, or in private practice. During this period, Renown Health is prohibited from interfering with the cardiologists’ employment discussions and from enforcing the provisions in their employment contracts prohibiting such activities. The purpose of this Order to Suspend is to allow Renown Health’s cardiologists to communicate with possible employers without the risk of violating the non-compete provisions in their current employment contracts. In order to facilitate this process, the Order to Suspend requires Renown Health to inform all of its cardiologists through an explanatory letter, as well as copies of the Orders and this Analysis to Aid Public Comment within two days of the Orders being placed on the public record.

The Order to Suspend is effective immediately, i.e., without a public comment period, upon the Agreement Containing Consent Orders being placed on the public record, and operates for at least 30 days while the Commission receives and considers public comment on the Decision and Order. Cardiologists may decide during this period to terminate employment, and may notify the special monitor (who has been appointed) to ensure their inclusion in the group of

up to ten cardiologists who will be allowed to leave Renown Health in the event that the Commission issues the Decision and Order. However, nothing in the Order to Suspend requires Renown Health to release any physician from his or her employment agreement until the Decision and Order becomes final.

B. Decision and Order

If the Commission issues the final Decision and Order, a second 30-day period (“Release Period”) will begin. During this period, cardiologist employees can terminate their employment with Renown without penalty so long as the following conditions are met:

- (1) The cardiologist must submit notice of an intention to terminate employment with Renown Health to the monitor who has been appointed for the purpose of assuring confidentiality;
- (2) The cardiologist must state his or her intention to continue to practice in the Reno area for at least one year;
- (3) The cardiologist must be among the first 10 physicians to submit notice to terminate employment. Renown Health is not required to release more than 10 cardiologists from their employment contracts. To protect the confidentiality of the doctors who want to leave, the monitor will submit to Renown Health no more than the first 10 notices received; and
- (4) The cardiologist may not leave prior to the monitor delivering notice to Renown Health, but must leave employment with Renown Health within 60 days of Renown Health receiving notice from the monitor.

At any time during the Release Period, after the monitor has informed Renown that 10 physicians have met the requirements to terminate without penalty, Renown may request that the

Release Period be terminated.

If at the end of this Release Period fewer than six doctors have notified the monitor of their intent to terminate employment, the period in which cardiologists may continue to explore other employment opportunities and leave Renown's employment without penalty will remain open until six cardiologists have terminated their employment with Renown. This provision is included in the Decision and Order to ensure that *at least* six physicians can leave.

Paragraph II describes the basic terms under which cardiologists may terminate their employment with Renown Health. It prohibits Renown from (1) enforcing any non-compete, non-solicitation, or non-interference provisions in their employment agreements, (2) pursuing any breach of contract action for violation of any of these provisions, or (3) taking any retaliatory action against any physician who either leaves under the terms of the Orders or who decides not to leave after exploring other employment as allowed by the Orders.² The Order does not, however, require Renown to allow cardiologists to terminate their employment agreements in a manner other than that specified in the Decision and Order.

Paragraph III provides for the extension of the period for cardiologists to terminate their employment if at least six cardiologists do not terminate during the initial period.

Paragraph IV includes a number of provisions to ensure that Renown Health will not take any actions to discourage physicians from exploring opportunities to leave or from leaving its employment pursuant to the Decision and Order. In addition, Paragraph IV.A.6 prohibits Renown Health, for a period of three years, from denying, terminating or suspending the medical staff privileges of any physician who leaves Renown Health's employment pursuant to the

² The Order does not require that any doctor terminate employment with Renown or to work for any other entity. Similarly, it does not require Renown to fire any doctor. It also does not prohibit Renown from negotiating with a doctor to reach a mutual agreement for that physician's employment to be terminated.

Consent Orders.

Paragraph V preserves Renown Health's obligation to provide transition services to cardiologists whose employment contracts include such provisions, excluding transitional services relating to negotiating with health plans. Paragraph VI requires Renown Health to give advance notification for future acquisitions affecting this market. Paragraph VII specifies the rules governing the work of the special monitor.

The remaining order provisions are standard reporting requirements to allow the Commission to monitor on-going compliance with the provisions of the Order.

V. Renown Health's Agreement with the Nevada Attorney General

The State of Nevada, through its Attorney General, worked with the Commission staff in the investigation and resolution of this matter. The Nevada Attorney General filed her own complaint containing allegations similar to those in the Commission's complaint, and Renown Health has entered into a stipulated agreement with the Nevada Attorney General that contains obligations similar to those in the Commission's orders. This agreement is embodied in a document called a Final Judgment, and is subject to court approval. Copies of these documents can be obtained from the Nevada Attorney General's Office.

By direction of the Commission.

Donald S. Clark
Secretary.

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